

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TOM BEGAYE JR.,

Movant,
vs.
No. CV 19-00587 WJ/JFR
No. CR 16-02376 WJ

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the Motion Pursuant to Ineffective Assistance of Counsel filed by Movant, Tom Begaye, Jr., on June 25, 2019 (CV Doc. 1; CR Doc. 65) (“Motion”). The Court has also reviewed the docket in criminal case no. CR 16-02376 WJ.

Movant Begaye’s Motion challenges his conviction and sentence in CR 16-02376 on the ground of ineffective assistance of counsel. (CV Doc. 1 at 2-8; CR Doc. 65 at 2-8). The Court intends to recharacterize Begaye’s Motion as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when

a court recharacterizes a pro se litigant’s motion as a first § 2255 motion . . . the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restriction on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Begaye that it intends to recharacterize his Motion as a first § 2255 motion and afford him an opportunity to withdraw the motion or to amend it to add additional claims he may have. *See* Rule 2 of the Rules Governing Section 2255

Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: “(1) specify *all grounds* for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.” (emphasis added)). If Begaye fails to timely amend or withdraw his Motion, then Begaye’s Motion will be recharacterized and any subsequent § 2255 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS ORDERED that Movant Tom Begaye, Jr. is **GRANTED** leave to amend or withdraw his Motion (CV Doc. 1; CR Doc. 65), which the Court intends to recharacterize as a first motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, within twenty-one (21) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of the Court **MAIL** a copy of this Order, together with a form § 2255 motion and instructions, to Movant Begaye.



JOHN F. ROBBENHAAR
United States Magistrate Judge